IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 20141 of 2004

Between:

Banoth Balaji, s/o Venkatiya,
r/o Teegala Banjara Village, Konijerla Mandal, Khammam District.

..... PETITIONER

AND

1 The District Co.operative Central Bank, Wayira Branch,
Wayira, Khammam District, rep., by its Manager.
2 The Deputy Registrar/Officer on Special Duty, District Co.operative Central Bank Ltd., Khammam.
3 The Sale Officer, District Co.operative Central Bank, Khammam, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, particularly a writ in the nature of mandamus, declaring the action of the respondents herein in issuing the auction notice dt.1-11-2004 in EP No.50/2001-02 without giving any demand notice and further action of the respondent 2 and 3 herein in proposing to conduct auction on 2-11-2004 without considering the representation of the petitioner has illegal, arbitrary and unconstitutional and consequently direct the respondents herein to withdraw the E.P.No.50/2001-02 on the file of the District Co.operative Central Bank Ltd., Khammam.

Counsel for the Petitioner : MR. K.V.SUBRAMANYA NARASU

Counsel for the respondents 1 & 3: Mr. P.M.Gopal Rao, Advocate

Counsel for the Respondents No.2 : GP FOR COOPERATION

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.20141 OF 2004

ORAL ORDER :

This writ petition is filed seeking a declaration that the action of the respondents in issuing the auction notice dated 01-11-2004 in E.P.No.50/2001-02 proposing to conduct auction on 02-11-2004 is arbitrary and illegal.

It is not in dispute that the petitioner has availed a loan of Rs.7,50,000/- from the first respondent as long back as in the year 2000. The petitioner pleads that on 01-11-2001 there was a fire accident in the mill in which the petitioner suffered huge loss and that he filed O.P.No.1008 of 2003 in the Court of the District Judge, Khammam for payment of Rs.12,00,000/- for damages sustained in the accident and the same is still pending. It is further stated that in view of the accident caused in the mill, the

petitioner is not in a position to raise the amounts for payment, but in the meanwhile sale notice dated 05-08-2004 was served on him from which he came to know that E.P.No.50/2001-02 was filed by the first respondent Bank for recovery of the amounts due under the Award passed by the 2nd respondent and that sale of the mill was fixed on 15-09-2004. Immediately, thereafter the petitioner by letter dated 13-09-2004 made a request to the respondents to drop the auction assuring that he would pay the entire amount due as and when the insured amount is received, But, the respondents failed to consider his request and proposed to conduct auction on 15-09-2004. Hence, the petitioner filed W.P.No.16972 of 2004 in which this Court granted interim stay of all further proceedings. However, the auction was not conducted on 15-09-2004. Thereafter, the present auction notice has been issued on 01-11-2004 proposing to conduct auction on 02-11-2004, which is challenged in this writ petition.

The only contention raised by the petitioner is that since the representation made by the petitioner, dated 03-09-2004 requesting to grant further time for making payment is pending, the first respondent Bank is not justified in issuing the impugned auction notice proposing to conduct the auction on 2-11-2004. The further submission is that there was no notice to the petitioner before passing the impugned award and therefore the same cannot be executed.

I do not find any substance in any one of the contentions raised by the petitioner. Even assuming that an ex parte award was passed against the petitioner, it is to be noted that the petitioner is very well aware of the said Award and the execution proceedings initiated in E.P.No.50/2001-02. Admittedly, he filed W.P.No.16972 of 2004 and obtained stay of the auction scheduled on 15-09-2004. However, he failed to take any steps to get the ex parte order set aside. Thus, having allowed the award to become final, the objections now raised by the petitioner for executing the said award are untenable and cannot be accepted.

In the circumstances, I do not see any justifiable reason to hold that the auction proposed under the impugned notice dated 01-11-2004 is arbitrary and illegal.

Accordingly, the Writ Petition is dismissed. No costs.

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02nd November, 2004.

Gbs

To

1 The Manager, District Co.operative Central Bank, Wayira Branch,
Wayira, Khammam District.

2 The Deputy Registrar/Officer on Special Duty, District Co.operative Central Bank Ltd., Khammam.
3 The Sale Officer, District Co.operative Central Bank, Khammam, Khammam District.

4.2CCs to G.P. for Co-operation, High Court of AP Bldgs, Hyderabad (OUT).

5.2CD copies